

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Tony L. Hammond; and
Nanci E. Langley

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
China Post Group–United States Postal Service
Multi-Product Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2011-7

ORDER CONCERNING AN ADDITIONAL INBOUND COMPETITIVE MULTI-SERVICE
AGREEMENTS WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT

(Issued September 23, 2011)

I. INTRODUCTION

The Postal Service seeks to include a negotiated service agreement with China Post Group under the Inbound Market Dominant Multi–Service Agreements with Foreign Postal Operators 1 product. For the reasons discussed below, the Commission approves the request.

II. BACKGROUND

On August 16, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3010.40 *et seq.* of a Type 2 rate adjustment concerning the inbound portion of a Multi-Product Bilateral Agreement with China Post Group (China Post 2011 Agreement) that the Postal Service seeks to add to the Inbound Market Dominant Multi-Service Agreements with Foreign Post Operators 1 product.¹

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) and the China Post Group–United States Postal Service Letter Post Bilateral Agreement (CPG Agreement). In Order No. 700, the Commission approved the functionally equivalent HongKong Post Agreement.² The Postal Service asserts that the China Post 2011 Agreement is similar to the China Post 2010 Agreement, TNT Agreement, and the HongKong Post Agreement.

The Postal Service filed supporting materials including a redacted copy of the China Post 2011 Agreement, financial documentation, and an application for non-public treatment of materials filed under seal.

The China Post 2011 Agreement covers inbound Letter Post in the form of letters, flats, small packets and bags, and International Registered Mail service for Letter Post. In addition, it includes an ancillary service, delivery confirmation, for Letter Post small packets. Notice at 3-4. The inbound rates under the Agreement are scheduled to become effective October 1, 2011, upon expiration of current CPG

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, August 16, 2011 (Notice). See also Docket Nos. MC2010-35, R2010-5 and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549).

² See Docket No. R2011-4, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, March 18, 2011 (Order No. 700).

Agreement rates on September 30, 2011. *Id.* at 3. The China Post 2011 Agreement provides that it becomes effective after all regulatory approvals have been received, acceptance of specific business rules by both parties, notification to China Post, and mutual agreement on an effective date. *Id.* Attachment 2 at 2. The Agreement, however, may be terminated by either party with no less than 30 days' written notice. *Id.* at 3.

The Postal Service states that the China Post 2011 Agreement is expected to generate financial performance improvements, will not cause unreasonable harm in the marketplace, and is functionally equivalent to the previously filed CPG Agreement, TNT Agreement, and HongKong Post Agreements. *Id.* 5-10.

The Postal Service concludes that the China Post 2011 Agreement should be added as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 13.

In Order No. 818, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.³

III. COMMENTS

Comments were filed by the Public Representative.⁴ No other interested person submitted comments. The Public Representative agrees that the instant Agreement's inbound rates represent an improvement over the default Universal Postal Union (UPU) terminal dues rates. He asserts, however, that the instant Agreement will not improve the net financial position of the Postal Service because the new inbound rates will yield a lower unit contribution than does the existing CPG Agreement. *Id.* at 3-4.

³ Notice and Order Concerning Rate Adjustment for Bilateral Agreement with China Post 2011 and Functionally Equivalent Negotiated Service Agreement, August 22, 2011 (Order No. 818).

⁴ Public Representative Comments on Postal Service Notice Concerning Rate Adjustment for Bilateral Agreement with China Post 2011 and Functionally Equivalent Negotiated Service Agreement, August 30, 2011 (PR Comments).

The Public Representative also contends that the China Post 2011 Agreement is not functionally equivalent to the existing agreements. He asserts that additional contract provisions establishing rules for the financial settlement process and determining the effective date may affect results under the contract. *Id.* at 3.

IV. COMMISSION ANALYSIS

In Order No. 549, the Commission established the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and two functionally equivalent agreements. In its analysis of the market dominant product in that proceeding, the Commission reviewed the statutory requirements for inclusion of negotiated service agreements under this product. As the Postal Service seeks to add a comparable agreement to the CPG Agreement approved in Docket No. R2010-6, there is no need to determine whether the instant Agreement should be classified as market dominant.

Statutory responsibilities. The statutory and regulatory provisions of 39 U.S.C. 3622(c)(10) and 39 CFR 3010.40(a) are applicable to the instant Agreement and require the Commission to make a finding that the proposed market dominant negotiated service agreement must either (1) improve the net financial position of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i)); or (2) enhance the performance of various operational functions (39 U.S.C. 3622(c)(10)(A)(ii)). Additionally, the negotiated service agreement may not “cause unreasonable harm to the marketplace” (39 U.S.C. 3622(c)(10)(B)) and “must be available on public and reasonable terms to similarly situated mailers.” 39 CFR 3010.40(c).

Financial analysis. The Postal Service states that the negotiated rates in the bilateral agreement represent an improvement over the default rates set by the UPU. Notice at 1. Based upon the financial model, the Postal Service further states that the

Agreement will improve the net financial position of the Postal Service and therefore complies with section 3622(c)(10). *Id.* at 8.⁵

The Public Representative argues that the China Post 2011 Agreement will not improve the net financial position of the Postal Service because unit contribution and cost coverage are reduced compared to the existing CPG Agreement. PR Comments at 3-4.

The Public Representative's contention is not persuasive. Absent the instant Agreement, the default rates, UPU terminal dues, would apply. The inbound China Post 2011 Agreement rates represent an improvement over the latter. The Commission urges the Postal Service to continue to make cost coverage improvements whenever possible in its negotiated service agreements.

The Postal Service states that the Agreement will not result in unreasonable harm to the marketplace. Notice at 5. It contends that because the Postal Service and China Post are the designated operators for their respective countries, there are limited alternatives for receiving inbound single-piece Letter Post. Thus, the Postal Service argues that the instant Agreement will not cause competitive harm. *Id.* No party contends otherwise.

The Commission agrees. There is no indication that the instant Agreement will cause unreasonable harm in the marketplace.

Functional equivalency. The Postal Service asserts that the China Post 2011 Agreement is functionally equivalent to the existing CPG Agreement, TNT Agreement, and HongKong Post Agreement. *Id.* at 8. To that end, it identifies various similarities among the agreements, *e.g.*, each involves rates for Letter Post tendered by a foreign post operator. *Id.* at 9. In addition, using the CPG Agreement for comparison purposes, the Postal Service identifies various differences between the two agreements, including the term, purpose of the agreement, signatory, revision of

⁵ The Postal Service also cites performance improvements consisting of delivery confirmation services for letter-class small packets, barcoding, sortations for routing to the Postal Service's International Service Centers, and scanning updates. *Id.* at 4-5.

product stream rates, detailed air conveyance charges, specifications for letters, execution of a separate accord and acceptance of accounting business rules prior to determining an effective date, related updates, and other changes. *Id.* at 10-12.

The Public Representative contends that two contract provisions render the instant Agreement dissimilar to the CPG Agreement. PR Comments at 3-4. He asserts the addition of accounting business rules for the settlement process and its impact on the effective date may adversely affect performance under the China Post 2011 Agreement. While the mutual agreement on the accounting business rules may affect the effective date because of deliberations on terms, the effect should be relatively minor. The parties pledge to negotiate in good faith to develop rules applicable to the settlement process. Notice, Attachment 1 at 11.

The instant Agreement appears to be similar to the agreements filed in Docket Nos. R2010-5 and R2010-6, although they differ in certain respects relative to applicable accounting business rules, the process to determine the effective date, and other changes as described above. These differences notwithstanding, the Commission concludes that the instant Agreement may be included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

Request to exclude the proposed product from service performance measurement reporting. The Postal Service requests an exception from the requirement to report service performance for the instant Agreement similar to the precursor agreements in Docket Nos. R2010-5, R2010-6, and R2011-4 filed under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 7. The Postal Service states that it will report information on this Agreement in the Annual Compliance Report. Negotiated service agreements with substantially all components of the Agreement included in the measurement of other products may be granted an exception from reporting pursuant to 39 CFR 3055(a)(3). The exception is granted.

Other issues. Because the Postal Service has not identified a “baseline agreement,” the current agreements collectively serve as the measure for functional

equivalence. The Commission may review this issue further in the event that the Postal Service does submit an agreement to be considered a baseline agreement.

The China Post 2011 Agreement does not have a specific termination date.⁶ The Postal Service shall promptly notify the Commission of the effective and termination dates. If the China Post 2011 Agreement terminates early, the Postal Service shall notify the Commission within 30 days of the termination date.

Conclusion. The Commission finds that the China Post 2011 Agreement falls within the parameters of the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

V. ORDERING PARAGRAPHS

It is ordered:

1. The China Post 2011 Agreement filed in this docket is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5 and R2010-6) product.
2. The Postal Service shall notify the Commission of the effective and termination dates of the China Post 2011 Agreement and, as set forth in the body of this Order, if the Agreement terminates early.
3. The Postal Service request that the China Post 2011 Agreement be excepted from separate reporting under 39 CFR 3055.3(a)(3) is granted.

By the Commission.

Ruth Ann Abrams
Acting Secretary

⁶ The parties have agreed to communicate their intent to continue or modify the Agreement prior to the expiration of applicable settlement rates.